IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 136 of 2000

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHEMABHAI DHIRABHAI PAGI

Versus

STATE OF GUJARAT

Appearance:

MR JR DAVE for Petitioner

MR ND GOHIL, ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 13/04/2000

ORAL JUDGEMENT

1. Rule. Mr.N.D.Gohil, learned APP waives service of rule for respondent - State. On a joint request of learned counsel for the respective parties, this revision is taken up for final hearing today.

2. The present petitioner was accused in Criminal

Case No.1139/95 in the Court of the learned JMFC, Lunavada, where he was convicted u/s 279 of the IPC and sentenced to 10 days simple imprisonment with Rs.500/fine, in default 10 days simple imprisonment, and was further convicted u/s 427 of the IPC and sentenced to 5 days simple imprisonment with fine of Rs.250/-, in default 2 days simple imprisonment.

3. This judgement and order of conviction and sentence was challenged by the petitioner - accused by way of filing an appeal before the Sessions Court.

4. As a result of re-appreciation of evidence on part of the Sessions Court, the appeal was partly allowed, the conviction u/s 279 of IPC was sustained, but the sentence was reduced to simple imprisonment till rising of Court and the fine was increased from Rs.500/- to Rs.700/-, in default 1 month simple imprisonment, and so far as the conviction u/s 427 of IPC is concerned, the sentence of imprisonment was revoked and the sentence of fine was increased from Rs.250/- to Rs.300/-, in default 2 days simple imprisonment. Similarly, a fine of Rs.100/- in respect of the conviction u/s 177 of the Motor Vehicles Act was confirmed, in default 2 days simple imprisonment.

5. It is this judgement and order of sentence which is the subject matter of the present revision.

6. I have heard the learned counsel for the respective parties, and have perused the two judgements in question, and such oral and documentary evidence to which my attention has been drawn. On the facts and circumstances of the case, it appears that the sentence is unnecessarily harsh in respect of an act committed by the accused, which perhaps could have been said to be an inadvertent act, namely he took the bus into a ditch or nulla in order to avoid hitting a child.

7. As a result of the hearing and discussion it appears to the Court that the conviction u/s 427 cannot be sustained for the simple reason that the damage suffered by the owner of the hut was a result of the impact by the bus, but obviously the mens rea was absent and not established by evidence on record. On the facts, it could not possibly be said that the accused had intended to cause damage or mischief within the meaning of section 427 of the IPC. This conviction and sentence is therefore set aside.

8. On the facts and circumstances of the case, I am

of the opinion that interest of justice will be served by imposing a fine of Rs.50/- in respect of conviction u/s 177 of the M.V. Act, in default 2 days simple imprisonment.

9. This revision is therefore partly allowed to the aforesaid extent and rule is made absolute to the aforesaid extent.

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